



Storm Water Phase II Proposed Rule

Permitting and Reporting: The Process and Requirements

Storm Water Phase II Proposed Rule Fact Sheet Series

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This fact sheet is based on the Storm Water Phase II Proposed Rule. Therefore, the information provided herein is subject to change upon publication of the final Phase II rule in November 1999. A revised series of fact sheets will be provided at that time. A comprehensive list of the current fact sheets is in the text box at left.

As proposed, owners and operators of small municipal separate storm sewer systems (MS4s) covered by the Storm Water Phase II program would be required to obtain National Pollutant Discharge Elimination System (NPDES) storm water permit coverage because storm water discharges from MS4s are considered a "point source" of pollution. All point source discharges, unlike nonpoint sources such as agricultural runoff, are required under the Clean Water Act (CWA) to be covered by federally enforceable NPDES permits. It is important to note that any owner or operator of an MS4 already permitted under the NPDES Phase I storm water program, even one serving less than 100,000 people, should not, and can not, obtain a Phase II storm water permit.

NPDES storm water permits are issued by an NPDES permitting authority, which may be a NPDES-delegated State or a U.S. EPA Region in non-delegated States (see the *For Additional Information* section of this fact sheet for a list of NPDES permitting authorities). Once a permit application is submitted by the owner or operator of a regulated small MS4 and a permit is obtained, the conditions of the permit would need to be satisfied (i.e., development and implementation of a storm water management program) and periodic reports would need to be submitted on the status and effectiveness of the program.

This fact sheet explains the various permit options that are expected to be available for owners or operators of regulated small MS4s and details their proposed permit application and reporting requirements. Important compliance deadlines also are highlighted. The proposed program coverage and program requirements for Phase II small MS4s are explained in Fact Sheets 2.0 through 2.8.

What Permitting Options Would Be Available for Owners or Operators of Regulated Small MS4s?

Unlike the Phase I program that primarily utilizes individual permits for medium and large MS4s, the proposed Phase II approach would allow owners or operators of regulated small MS4s to choose from as many as three permitting options. The actual available options, however, would be at the discretion of the NPDES permitting authority. Potential options are listed below:

☐ General Permits

- General permits are strongly encouraged by EPA. The Phase II program has been designed specifically to accommodate a general permit approach.
- General permits prescribe one set of requirements for all applicable permittees. General permits are drafted by the NPDES permitting authority, then published for public comment before being finalized and issued.
- A Notice of Intent (NOI) serves as the application for the general permit. The permittee would first read the requirements specified in the permit, then submit an NOI informing the NPDES permitting authority of how they are planning to comply with the permit. As

proposed, a Phase II permittee would have the flexibility to develop individualized storm water programs that address their particular characteristics and needs as long as their programs satisfy the basic requirements of the general permit. The specific information to be included in an NOI is described under the next question below.

- The permittee would follow Phase II permit application requirements (see discussion below).
- In the general permit, the NPDES permitting authority could reference existing responsibilities among governmental entities for one or more minimum measures, thereby relieving the permittee of the responsibility of implementing that particular minimum control measure or measures. For example, the NPDES permitting authority could reference an existing county erosion and sediment control program for construction sites that they deem as equivalent to the Phase II construction site runoff control minimum measure. The permittee, if located in the referenced county, would not, then, be required to develop and implement their own construction program, since construction activity would already be adequately addressed by the county.

☐ Individual Permits

- Individual permits are required for Phase I “medium” and “large” MS4s, but not recommended by EPA for Phase II program implementation.
- Individual permits are permits written by the NPDES permitting authority for a particular permittee. A comprehensive application is submitted by the permittee and permit requirements are established by the NPDES permitting authority based on the information in the application. The result is a permit tailored specifically for the permittee. The draft individual permit is published for public comment and then finalized.
- The permittee would follow Phase II permit application requirements and provide an estimate of square mileage served by the system and any additional information requested by the NPDES permitting authority.
- The NPDES permitting authority could reference existing responsibilities of governmental entities in the individual permit, as explained above in the last bullet under *General Permits*.

☐ Modification of a Phase I Individual Permit – A Co-Permittee Option

- The owner/operator of a regulated small MS4 could participate as a co-permittee in a neighboring Phase I

MS4’s storm water management program by seeking a modification of the existing Phase I individual permit. A list of Phase I medium and large MS4s can be obtained from the EPA Office of Wastewater Management or downloaded from the OWM web site.

- The permittee would follow Phase I permit application requirements (with some exclusions).
- The permittee would comply with the applicable terms of the Phase I individual permit rather than the minimum control measures in the Phase II proposal.

What Would the Permit Application Require?

Owners/operators of regulated small MS4s would be required to submit in their NOI or individual permit application the following information:

- ☐ Best management practices (BMPs) that will be implemented for each of the six minimum control measures:
 - ❶ Public education and outreach on storm water impacts
 - ❷ Public participation/involvement
 - ❸ Illicit discharge detection and elimination
 - ❹ Construction site storm water runoff control
 - ❺ Post-construction storm water management in new development/redevelopment
 - ❻ Pollution prevention/good housekeeping for municipal operations

(See Fact Sheets 2.3 through 2.8 for full descriptions of each measure, including examples of BMPs and measurable goals)
- ☐ Measurable goals for each minimum control measure (i.e, narrative or numeric standards used to gauge program effectiveness);
- ☐ Estimated months and years in which actions to implement each measure will be started and completed; and
- ☐ The person or persons responsible for implementing or coordinating the storm water program.

Relying on Another Entity

The Phase II permittee would have the option of relying on other entities already performing one or more of the minimum control measures, provided that the existing control measure, or component thereof, is at least as stringent as the Phase II rule requirements. For example, a county already may have an illicit

discharge detection and elimination program in place and may allow an owner/operator of a regulated small MS4 within the their jurisdiction to rely on the county program instead of formulating and implementing a new program. In such a case, the permittee would not need to implement the particular measure, but would still remain ultimately responsible for its effective implementation. For this reason, EPA recommends that the permittee enter into a legally binding agreement with the other entity. If the permittee chooses to rely on another entity, they would need to note this in their permit application and subsequent reports.

What Would the Permit Require?

The owner/operator of a regulated small MS4 would have the flexibility to determine the BMPs and measurable goals, for each minimum control measure, that are most appropriate for them. Their chosen BMPs and measurable goals, submitted in their permit application, would become their required program; however, the NPDES permitting authority could require changes in the mix of chosen BMPs and measurable goals if all or some of them are found to be inconsistent with the provisions of the final Phase II rule. Likewise, the permittee could change their mix of BMPs if they determine that their program is not as effective as it could be. Fact Sheets 2.3 through 2.8 further describe each of the minimum control measures, while the proposed permit requirements for evaluation/assessment and recordkeeping activities are described in separate sections below.

Menu of BMPs

The BMPs for minimum measures 3 through 6 (as listed in the permit application requirements section, above) would not be enforceable until the NPDES permitting authority has issued a list, or “menu,” of BMPs from which a regulated owner/operator could choose. The NPDES permitting authority would be required to provide this menu as an aid for those owners/operators that are unsure of the most appropriate and effective BMPs to use. Since the menu would serve as guidance only, the owners/operators would not be restricted to implement only those BMPs provided in the menu.

What Standards Would Apply?

A Phase II small MS4 owner/operator would be required to design its program in such a way as to:

- ☐ Reduce the discharge of pollutants to the “maximum extent practicable” (MEP); and
- ☐ Protect water quality.

The successful implementation of approved BMPs would be considered compliance with the technical standard of MEP. The Phase II Proposed Rule considers narrative effluent limitations

that require the implementation of BMPs and the achievement of measurable goals as the most appropriate form of effluent limitations to achieve the protection of water quality, rather than requiring storm water discharges to meet numeric effluent limitations.

EPA intends to issue Phase II NPDES permits consistent with its August 1, 1996, Interim Permitting Approach policy, which calls for BMPs in first-round storm water permits and expanded or better tailored BMPs in subsequent permits, where necessary, to provide for the attainment of water quality standards. In cases which information exists to develop more specific conditions or limitations to meet water quality standards, these conditions or limitations should be incorporated into the storm water permit. Monitoring would not be required under the Phase II proposal, but the NPDES permitting authority would have the discretion to require monitoring if deemed necessary.

What Evaluation/Reporting Efforts Would Be Required?

Frequency of Reports

Reports would need to be submitted annually during the first permit term. For subsequent permit terms, reports would need to be submitted in years 2 and 4 only, unless the NPDES permitting authority requests more frequent reports.

Required Report Content

The reports would be required to include the following:

- ☐ The status of compliance with permit conditions, including an evaluation of the appropriateness of the selected BMPs based on their effectiveness in reducing the discharge of pollutants from the system to the MEP and in protecting water quality;
- ☐ An assessment of the progress toward achieving the program’s measurable goals for each minimum control measure;
- ☐ Results of any information collected and analyzed, including monitoring data, if any;
- ☐ A summary of the storm water activities planned for the next reporting cycle; and
- ☐ A change in any identified measurable goals.

A Change in Selected BMPs

If, upon evaluation of the program, improved controls are identified as necessary, permittees could revise their mix of BMPs to provide for a more effective program. Such a change, and an explanation of the change, would be required to be included in a report to the NPDES permitting authority.

Would There Be Recordkeeping Requirements?

Yes. Records required by the NPDES permitting authority would need to be kept for at least 3 years and made accessible to the public at reasonable times during regular business hours. Records would not need to be submitted to the NPDES permitting authority unless the permittee is requested to do so.

permit applications within 3 years and 90 days from the date of publication of the final rule

- ❑ Regulated small MS4 storm water management programs fully developed and implemented by the end of the first permit term, typically a 5-year period

What Are the Proposed Deadlines for Compliance?

- ❑ Storm Water Phase II Final Rule scheduled for publication in November 1999
- ❑ The NPDES permitting authority issues general permits for regulated small MS4s within 3 years from the date of publication of the final rule
- ❑ Owners/operators of regulated small MS4s submit their

Would There Be Penalties for Not Complying with the Requirements?

Yes. The NPDES permit that the owner/operator of a regulated small MS4 would be required to obtain is federally enforceable, thus subjecting the permittee to potential enforcement actions and penalties by the NPDES permitting authority if the permittee does not fully comply with application or permit requirements. This federal enforceability also includes the right for interested parties to sue under the citizen suit provision (Section 405) of the CWA.

For Additional Information

Contacts

☞ U.S. EPA Regional Storm Water Coordinators¹

Region 1 {ME ² , NH ² , VT, MA ² , RI, CT}:	Thelma Hamilton	617 565-3569
Region 2 {NY, NJ, PR ² , VI}:	Sergio Bosques	787 729-6951(x 255)
Region 3 {PA, DE, DC ² , MD, VA, WV}:	Mary Letzkus	215 814-2087
Region 4 {KY, TN, NC, SC, MS, AL, GA, FL ² }:	Michael Mitchell	404 562-9303
Region 5 {MN, WI, IL, MI, IN, OH}:	Peter Swenson	312 886-0236
Region 6 {NM ² , TX ² , OK, AR, LA}:	Brent Larsen	214 665-7523
Region 7 {NE, KS, IA, MO}:	Ralph Summers	913 551-7418
Region 8 {MT, ND, WY, SD, UT, CO}:	Vernon Berry	303 312-6234
Region 9 {CA, NV, AZ ² , HI}:	Eugene Bromley	415 744-1906
Region 10 {WA, OR, ID ² , AK ² }:	Bob Robichaud	206 553-1448

¹ The U.S. EPA is the NPDES permitting authority for all federally recognized Indian Country Lands and for Federal facilities in CO, DE, FL, VT, VI, and WA.

² Denotes a non-delegated State for the NPDES storm water program. For these States only, the U.S. EPA Region is the NPDES permitting authority. All other States serve as NPDES permitting authorities for the storm water program. (Note: FL and TX will become NPDES permitting authorities for storm water in 2000.)

☞ U.S. EPA Office of Wastewater Management

- Phone : 202 260-5816
- E-mail: SW2@epa.gov
- Internet: www.epa.gov/owm/sw2.htm

Reference Documents

☞ Storm Water Phase II Proposed Rule Fact Sheet Series.

- Contact the U.S. EPA Water Resource Center at 202 260-7786 or at waterpubs@epa.gov
- Internet: www.epa.gov/owm/sw2.htm

☞ Storm Water Phase II Proposed Rule, published on January 9, 1998 in the *Federal Register* (63 FR 1536).

- Internet: www.epa.gov/owm/sw2.htm